LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

DR. RONALD GLENN, Complainant, vs. ORMSBY COUNTY TEACHERS ASSOCIATION; JOHN I. SULLIVAN; DICK SEELY; BRUCE A. CLARK; DAVE HAMPTON and NEVADA STATE EDUCATION ASSOCIATION, Respondents.	)	No. A1-045277

D E C I S I O N

This complaint alleges that the failure of the respondents to negotiate a doctoral salary scale for the complainant was in violation of NRS 288.270(2)(b)[1] and seeks damages in the amount of $1,512.00 plus interest for each of the school years 1973-74 and 1974-75, punitive and exemplary damages in the amount of $5,000.00, costs, attorney's fees and other equitable relief.

Prior to filing their answer, the respondents moved to dismiss the complaint. We ruled on the motion in August of 1974 stating:

> The motion to dismiss the complaint against the Nevada State Education Association is well taken and is granted. The motions to dismiss the complaint against the Ormsby County Teachers Association and the individual respondents is denied. Determination of whether or not this Board possesses the jurisdiction to grant all the relief sought in the complaint is deferred until submission of the complaint after hearing.

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1. NRS 288.270(2)(b) provides:

> It is a prohibited practice for a local government employee or for an employee organization or its designated agent willfully to:
> ...
> (b) Refuse to bargain collectively in good faith with the local government employer, if it is an exclusive representative, as required in NRS 288.150. Bargaining collectively shall be construed to include the entire bargaining process, including mediation and factfinding, provided for in this chapter.

The remaining respondents answered the complaint on November 8, 1974, and the matter was set and heard on December 19, 1974.

During the course of that hearing, we verbally ruled that we would proceed to hear only the first two parts of the complaint's prayer (the request for damages in the amount of $1,512.00 for each of the two school years) as we do not deem it to be within our jurisdiction to grant punitive damages, exemplary damages, costs or attorney's fees.

The evidence discloses that the complainant, who holds a doctorate from Birgham Young University, entered the employ of the Carson City School District in September of 1972. At that time, and at all times relevant hereto, the school district's professional compensation schedule extended only to a professional level of a master's degree plus 16 credits.

Dr. Glenn discussed the possibility of extending the schedule to include a doctoral pay schedule with members of the respondent association. The question of whether or not the association should attempt to negotiate an extended salary schedule was subsequently presented to the membership of the association for a vote. On December 14, 1972, the Executive Board of the association was advised at their meeting that the proposal to extend the salary schedule had been rejected by the voters. The association, therefore, did not present such a proposal in their collective bargaining that year.

During the course of negotiations for the following contract year, in early 1974, Dr. Glenn again contacted the association's representatives but was advised that there were matters of higher priority and greater concern to the association's members which had been placed on the negotiating table that year.

Under the provisions of NRS 288.270 (2) (b) it is incumbent upon the local government employee organization or its designated agent to bargain collectively in "good faith" with the local government employer. Neither this Board nor any Court of this State has been called upon before to determine

what constitutes such "good faith" collective bargaining.

In Vaca v. Sipes, 386 U.S. 171 (1967), the United States Supreme considered a claim of bad faith representation by a union member whose grievance had not been taken to arbitration under the fifth step of the collective bargaining agreement's grievance procedure. The Court found that the determination by the union's executive board not to process the grievance further was not in violation of their responsibilities to fairly represent the desires of their membership. "A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." Id at 190.

The Supreme Court, in Ford Motor Co. v. Huffman, 345 U.S. 330 (1952), reviewed a case wherein a union member sought to declare discriminatory and invalid a collective bargaining agreement which permitted credit for both pre-employment and post-employment military service. The High Court noted that the union's negotiator must weigh the relative advantages and disadvantages of differing proposals thus making complete satisfaction of all members hardly to be expected. They further stated that "[a] wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion." Id at 338. See also, Humphrey v. Moore, 375 U.S. 335 (1964), reh. den. 376 U.S. 935 (1964).

When Dr. Glenn first approached the association regarding the negotiation of a doctoral pay scale, the matter was put a vote of the membership and rejected. In the following contract year, he was advised that the proposals which had been submitted for negotiation were those of greatest urgency and highest priority among the membership.

The evidence fails to disclose that the conduct of the association, its members, officers or representatives was "arbitrary, discriminatory or in bad faith." Vaca v. Sipes, supra.

FINDINGS OF FACT

1. That at the time of the filing of this complaint, the complainant, Dr. Ronald Glenn, was a local government employee employed by the Carson City School District as a teacher.

2. That the respondent, Ormsby County Teachers Association, is a local government employee organization recognized by the Carson City School District as the exclusive negotiating representative for the certified teaching personnel in the school district.

3. That the individual respondents, John I. Sullivan, Dick Seely, Bruce A. Clark and Dave Hampton, were, at all times relevant hereto, local government employees employed by the Carson City School District as teachers.

4. That the individual respondents, John I. Sullivan, Dick Seely, Bruce A. Clark and Dave Hampton, were, at all times relevant hereto, members of the respondent Ormsby County Teachers Association.

5. That the complainant, Dr. Ronald Glenn, holds a Doctor's degree awarded by Brigham Young University.

6. That complainant, Dr. Glenn, entered the employ of the Carson City School District in September of 1972.

7. That at all times relevant hereto the professional compensation schedule of the Carson City School District extended only to a Master's degree plus 16 credits.

8. That after entering the employ of the Carson City School District the complainant contacted members of the Ormsby County Teachers Association regarding the possibility of their attempting to negotiate a doctoral column on the professional compensation schedule.

9. That the question of negotiating an extended professional compensation schedule was placed to a vote of the membership of the Ormsby County Teachers Association and was rejected in December 1972.

10. That no proposal relating to an extension of the professional compensation schedule to include a doctoral column was presented in the negotiations between the Ormsby County Teachers Association and the Carson City School District for the fiscal year 1973-74.

11. That in early 1974, complainant, Dr. Glenn, contacted representatives of the Ormsby County Teachers Association regarding the possibility of negotiating a professional compensation schedule which included a doctoral column and was advised that there were matters of greater urgency and higher priority which had been submitted for negotiation.

CONCLUSIONS OF LAW

1. That under the provisions of Chapter 288 of the Nevada Revised Statutes the Local Government Employee-Management Relations Board has original jurisdiction over the parties and subject matter of this complaint.

2. That at the time of the filing of this complaint, the complainant, Dr. Ronald Glenn, was a local government employee within the term as defined in NRS 288.050 and was employed by the Carson City School District as a teacher.

3. That the respondent, Ormsby County Teachers Association, is a local government employee organization within the term as defined in NRS 288.040 and is recognized by the Carson City School District as the exclusive negotiating representative for the certified teaching personnel in the school district.

4. That the individual respondents, John I. Sullivan, Dick Seely, Bruce A. Clark and Dave Hampton were, at all times relevant hereto, local government employees within the term as defined in NRS 288.050 and were employed by the Carson City School District as teachers.

5. That the evidence discloses that the conduct of the respondents in failing to negotiate a doctoral salary column was not arbitrary, discriminatory or in bad faith and that such conduct was, therefore, not in violation of the provisions of NRS 288.270 (2) (b) or any other provision of Chapter 288 of the Nevada Revised Statutes.

Since we have not found that a prohibited practice occurred, the complaint is dismissed.

Dated this 7th day of April, 1975.

Chris N. Karamanos, Chairman

John T. Gojack, Vice Chairman